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May 30, 2006

VIA E-MAIL AND MAIL

Mr. James Rosen, President  
City Council  
City of Rochester Hills  
1000 Rochester Hills Drive  
Rochester Hills, Michigan 48309-3033

Re: *City Tax Millages*

Dear President Rosen:

This is intended to advise you about legal issues associated with the millage restructuring the City Council is considering. Although I have not been present at any City Council workshops where this subject was discussed, it is my understanding from conversations with you and Finance Director Jenuwine, and from minutes and newspaper reports I have read, that the City Council has discussed whether some or all of the City's general and special/dedicated millages can be combined into one general millage -- the objective being to give the City Council more flexibility in its budgeting, prioritization and spending of the City's tax revenues without having to raise the overall tax rate.

City Charter Section 4.2, subsection .1, sets a maximum millage limit of 5 mills on the assessed valuation of all real and personal property subject to taxation in the City, except for additional tax levies authorized in subsections .2 through .7.<sup>1</sup> Subsections .2 through .7 set forth various specific millage authorizations (some of which have expired) for road maintenance, police, older persons' activities, general community recreation, fire department, library, and special millages approved by the voters. Finance Director Jenuwine has provided information showing that the City's current millages go to the general fund, fire protection, police, pathway maintenance, drain maintenance, drain debt, two refunding debts, RARA, OPC operating, transportation and building, and the library.

We are in an area where the constitution, statutes and case law provide little guidance. Indeed, every city charter is somewhat unique, and the millage restructuring that the City is considering has not, as far as I can tell, been addressed by the legislature, the courts or the

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<sup>1</sup>The tax limitation contained in the City's Charter is significantly lower than what the Home Rule Cities Act authorizes. Under that Act, specifically MCL 117.3(g), cities can levy up to 2% of the taxable value of the real and personal property. This would equate to 20 mills.

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Attorney General. Therefore, my advice and opinion on this subject is untested and somewhat loosely based on my own understanding of the law and my discussions with the City's Finance Director, the City's bond counsel, and the Michigan Attorney General's office. The City's millages can be characterized in three categories: 1) debt retirement, 2) Charter millages, and 3) special voter-approved millages. Each will be addressed separately below:

***Debt Retirement.*** Bond counsel has, over the years, advised the City on the subject of millages levied for debt retirement. Typically, debt retirement pertains to the payment of principal and interest on bond issues. However, bond counsel, Terry Donnelly, and his predecessor, Chuck Moon, have advised the City that millage for Chapter 20 drains is just like voted debt millage and is not subject to the maximum tax limitation. MCL 280.499. This impacts proposed millage restructuring in two significant ways. First, millage for debt retirement has been considered to be exempt from tax limitations. In other words, debt retirement millage has been considered not to be subject to tax rate limitation. Second, it is unlikely that the City Council can, by Charter amendment, vote of the people, or other means (short of fully paying off the debt), modify or redirect the existing debt retirement millages. Those debts are typically backed by the City's full faith and credit and, according to bond counsel, any attempt to redirect or modify those debt retirement millages would violate the contract with the bondholders.

Consequently, it does not appear the City Council can lawfully shift millages collected for debt retirement to other purposes.

***Charter Millages.*** City Charter Section 4.2, in subsections .2 through .7, sets forth various specific or dedicated millages that the City Council may levy in addition to the 5 mills the City may levy under subsection .1. However, in order to modify, combine or redirect these Charter millages, the Charter must be changed by amendment or revision. I have previously advised the City Council on this subject, so, suffice it to say for our present purposes, Charter amendment is the simpler method which involves Council approval and voter approval, and can be used for non-major changes that do not change the form of the City's government. Charter revision is a more complicated process which requires the election and formation of a Charter commission and voter approval of the proposed new Charter. Charter revision is appropriate for major Charter changes affecting the form of the City's government. Where the line is between minor changes and major changes and whether or not a change affects the form of government can be uncertain at times. We have not found any Michigan case law dealing with the question of Charter amendment versus Charter revision in the context of millage restructuring, but my opinion is that the millage restructuring the City Council is considering does not affect the form of government and may be accomplished by Charter amendment. I have spoken to Assistant

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Attorney General George M. Elworth about this, and he agrees this is a Charter amendment issue, not a Charter revision.

I am also compelled to qualify and limit my analysis in regard to some of the Charter millages which have received voter approval for a time certain. For instance, police and OPC millages (to name just two) have received millage renewal approval from the voters, and it is my opinion that until those renewals expire, they will need to be treated like special voter-approved millages, discussed below.

Consequently, it is my opinion the City Council can, by Charter amendment, and subject to the foregoing limitations, modify or combine the Charter millages. However, if the City Council is inclined to go in this direction, I would like the opportunity to further research, consider and support this conclusion to minimize any uncertainty.

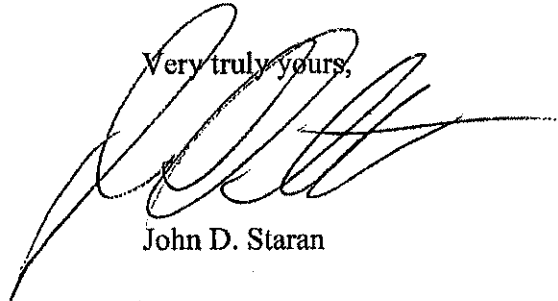
***Special Voter-Approved Millages.*** The third category of millages is special voter-approved millages. These millages come from ballot questions approved by the voters, and the millages are for specific purposes and for prescribed periods of time. Although it is within the City Council's discretion to levy the full millage approved by the voters, to levy none of it, or to levy something in between, I do not think the City Council can lawfully redirect or combine those special voter-approved millages. Rather, those millages can only be used for the precise purpose set forth in the ballot question. An example would be the green space millage approved by the voters last year. I do not think the City Council can take the tax revenues therefrom and combine or divert them to another purpose.

I am less certain about whether the City could submit another ballot question asking the voters to cancel or modify the previously approved ballot question. If the City Council is inclined to go in this direction, I would like the opportunity to research and consider this further, as I have not found any statute or case law, to date, on this particular issue. My feeling, however, is that it probably cannot be done because it would effectively be asking the voters to veto a prior vote in a circumstance where the City Council already has discretion to levy or not levy the current voter-approved special millage and the City can ask the voters to approve another special millage for a different purpose.

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In conclusion, the City Council's consideration of millage restructuring enters into largely uncharted waters in Michigan law. However, I believe the conclusions I have set forth above are the likely outcome if the City Council decides to go in that direction. The City Council has some flexibility, but not very much, in terms of modifying the City's current millage structure.

Very truly yours,

A handwritten signature in black ink, appearing to read "John D. Staran", with a long horizontal flourish extending to the right.

John D. Staran

JDS/ab

cc: Mayor Bryan K. Barnett  
Ms. Julie Jenuwine, Finance Director

**City of Rochester Hills Tax Levy (1999 - 2005 Actual / 2006-2014 Estimated)**  
**ASSUMES NO RENEWALS, GENERAL LEVY ABSORBS**

| Operating Millages             | 1999          | 2000          | 2001          | 2002          | 2003          | 2004          | 2005          | Est. 2006     | Est. 2007     | Est. 2008     | Est. 2009     | Est. 2010     | Est. 2011     | Est. 2012     | Est. 2013     | Est. 2014     |
|--------------------------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|
| General Fund                   | 2.6602        | 2.7267        | 2.8277        | 2.9188        | 3.0850        | 3.1130        | 3.2169        | 3.5676        | 3.8941        | 3.8668        | 3.8398        | 3.8129        | 3.7862        | 3.7597        | 3.7334        | 3.7073        |
| Fire Fund                      | 2.0792        | 2.0569        | 2.0332        | 2.0136        | 1.9000        | 1.9000        | 1.9000        | 1.9000        | 1.9000        | 1.9000        | 1.9000        | 1.9000        | 1.8929        | 1.8797        | 1.8665        | 1.8534        |
| Special Police I (Voted)       | 0.8316        | 0.8227        | 0.8132        | 0.8053        | 0.8003        | 0.7942        | 0.7895        | 0.7823        | 0.7768        | 0.7714        | 0.7660        | 0.7606        | 0.7553        | 0.7500        | 0.7448        | EXPIRED       |
| Special Police II (Voted)      | 0.4530        | 0.4481        | 0.4429        | 0.4386        | 0.4359        | 0.4326        | 0.4300        | 0.4261        | EXPIRED       | 0.4151        | 0.4452        | 0.4461        | 0.5030        | 0.6839        | 0.7047        | 0.9474        |
| Public Improvement Drains      | 0.3475        | 0.2338        | 0.2775        | 0.3270        | 0.4110        | 0.3980        | 0.3526        | 0.3945        | 0.4151        | 0.4452        | 0.4461        | 0.5030        | 0.6839        | 0.7047        | 0.9165        | 0.9474        |
| Pathway (Voted)                | 0.1979        | 0.1957        | 0.1934        | 0.1915        | 0.1903        | 0.1888        | 0.1281        | EXPIRED       |               |               |               |               |               |               |               |               |
| R.A.R.A. Operating (Voted)     | 0.1673        | 0.1655        | 0.1635        | 0.1619        | 0.1609        | 0.1596        | 0.1586        | EXPIRED       |               |               |               |               |               |               |               |               |
| Older Persons Millage (Voted)  | 0.2437        | 0.2410        | 0.2382        | 0.2476        | 0.2460        | 0.2441        | 0.2426        | 0.2404        | 0.2387        | 0.2370        | 0.2354        | 0.2337        | EXPIRED       |               |               |               |
| Older Persons Transportation ( | 0.0237        | 0.0234        | 0.0231        | 0.0228        | 0.0226        | 0.0224        | 0.0900        | 0.0892        | 0.0886        | 0.0880        | 0.0873        | 0.0867        | 0.0861        | 0.0855        | 0.0849        | 0.0843        |
| Open Space / Natural Features  | -             | -             | -             | -             | -             | -             | 0.3000        | 0.2973        | 0.2952        | 0.2932        | 0.2911        | 0.2891        | 0.2870        | 0.2850        | 0.2830        | 0.2811        |
| Library Operating              | 0.8316        | 0.8227        | 0.8132        | 0.8053        | 0.8003        | 0.7942        | 0.7895        | 0.7823        | 0.7768        | 0.7714        | 0.7660        | 0.7606        | 0.7553        | 0.7500        | 0.7448        | 0.7395        |
| <b>Operating - Subtotal</b>    | <b>7.8357</b> | <b>7.7365</b> | <b>7.8259</b> | <b>7.9324</b> | <b>8.0523</b> | <b>8.0469</b> | <b>8.3978</b> | <b>8.4797</b> | <b>8.3854</b> | <b>8.3730</b> | <b>8.3317</b> | <b>8.3467</b> | <b>8.2468</b> | <b>8.2147</b> | <b>8.1739</b> | <b>7.6130</b> |
| Debt Millages                  | 1999          | 2000          | 2001          | 2002          | 2003          | 2004          | 2005          | Est. 2006     | Est. 2007     | Est. 2008     | Est. 2009     | Est. 2010     | Est. 2011     | Est. 2012     | Est. 2013     | Est. 2014     |
| Special Drain Fund             | 0.6525        | 0.7662        | 0.7225        | 0.6730        | 0.5890        | 0.6020        | 0.6474        | 0.6055        | 0.5849        | 0.5548        | 0.5539        | 0.4970        | 0.3161        | 0.2953        | 0.0835        | 0.0526        |
| G.O.R.B. - Series 2002         | 0.5861        | 0.5737        | 0.5341        | 0.5132        | 0.4492        | 0.4293        | 0.3527        | 0.3307        | 0.3013        | -             | -             | -             | -             | -             | -             | -             |
| G.O.R.B. - Series 1998         | 0.0755        | 0.0734        | 0.0673        | 0.0312        | 0.0593        | 0.0580        | 0.0544        | 0.0508        | 0.1199        | 0.4441        | 0.3572        | -             | -             | -             | -             | -             |
| Older Persons Building Bond (  | -             | -             | 0.2183        | 0.2183        | 0.2183        | 0.2319        | 0.2158        | 0.2014        | 0.2048        | 0.1950        | 0.1982        | 0.1880        | 0.1899        | 0.1795        | 0.1806        | 0.1918        |
| <b>Debt - Subtotal</b>         | <b>1.3141</b> | <b>1.4133</b> | <b>1.5422</b> | <b>1.4357</b> | <b>1.3158</b> | <b>1.3212</b> | <b>1.2703</b> | <b>1.1884</b> | <b>1.2110</b> | <b>1.1938</b> | <b>1.1092</b> | <b>0.6850</b> | <b>0.5060</b> | <b>0.4748</b> | <b>0.2641</b> | <b>0.2444</b> |
| <b>TOTAL MILLAGES</b>          | <b>9.1498</b> | <b>9.1498</b> | <b>9.3681</b> | <b>9.3681</b> | <b>9.3681</b> | <b>9.3681</b> | <b>9.6681</b> | <b>9.6681</b> | <b>9.5963</b> | <b>9.5668</b> | <b>9.4410</b> | <b>9.0316</b> | <b>8.7528</b> | <b>8.6894</b> | <b>8.6380</b> | <b>7.8574</b> |

NOTE: FUTURE YEARS' HEADLEE FACTORS ARE UNKNOWN

